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# Regulation theory and Australian labour law: from antipodean Fordism to liberal-productivism

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## **Keywords**

liberal, fordism, antipodean, productivism, law, regulation, labour, australian, theory

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### **Biographical note**

I am a PhD student in the Faculty of Law, Humanities and the Arts at the University of Wollongong, working under the supervision of Associate Professor Andrew Frazer and Associate Professor Diana Kelly.

## **Regulation theory and Australian labour law: from antipodean Fordism to liberal-productivism**

*Abstract:* This paper employs the methodology of the Parisian Regulation Approach to periodise Australian political economy into distinct models of development. Within such models, labour law plays a key role in articulating the abstract capitalist need to commodify labour-power with the concrete realities of class struggle. Given the differential ordering of social contradictions and the distinct relationship of social forces within the fabric of each model of development, such formations will crystallise distinct regimes of labour law. This is demonstrated by a study of the two successive models of development which characterised Australian political economy since the post-World War II era; antipodean Fordism (1945-mid 1970s) and liberal-productivism (mid 1980s-present).

### **Introduction**

The end of the post World-War II 'long boom' in the mid-1970s proved the beginning of a process of political-economic change that has fundamentally altered and reformulated the institutions of Australian industrial relations, particularly the regime of labour law which underpins them. Labour law during the boom unified a permissive attitude towards organised labour, bargaining between capital and labour at a broad occupational level, a series of institutions which diffused wage gains from leading sectors and the growth of administrative fixes to heightened worker power. Today, the situation is radically different, with this regime usurped by another which combines hostility to trade unions, a destruction of the conciliation and arbitration system, a severing of the institutional links homogenising the wage structure and associating productivity and wage growth and an intensified juridification on the back of the increased valency of market forces.

Despite the significance of this shift, the nature of legal change remains poorly theorised. Both labour law and industrial relations remain disciplines beholden to a distinctly empiricist method (Treuren, 1997a, 2000). Even the development of the 'Labour Market Regulation Approach' (Arup et al, 2006) has largely failed to provide a rigorous account of the political economy of legal change beyond the recognition that neo-liberalism has materially altered the parameters of industrial relations (Quinlan, 2006). This inability to explain the articulations between legal change and the deep structures of Australian capitalism is apparent even in broader political economy work which explicitly seeks to do so (such as Mack, 2005). Here, the source of the poor theorisation of legal change is not so much an empiricist method as a static conception of law as an element of a reactive superstructure (forewarned by Pashukanis, 1978; Collins, 1982). Similarly, and although generative of much discussion, conceptual and methodological flaws dog more recent approaches to the study of labour law institutions, such as the 'Varieties of Capitalism' (VOC) and 'Legal Origins' (LO) schools. The cumulative result of these inadequacies is the lack of a nuanced, rigorous account of the relationship between labour law and Australian capitalism.

It is into this lacuna that this paper steps. I draw upon the methodology of the Parisian Regulation Approach (PRA) to periodise Australian political economy since World War II into two models of development, historically specific crystallisations of capitalist social relations unifying an industrial paradigm, accumulation regime and mode of regulation (Lipietz, 1992). These models, whilst derived from regulationist ideal-typical frameworks, have been sensitised to the Australian context and thus display a unique institutional materiality and distinctive trajectories of crisis. The models identified are *antipodean Fordism* (1945-mid 1970s) and *liberal-productivism* (mid 1980s-present), separated by a period of crisis characterised by 'institutional searching' to navigate an escape therefrom (Heino, 2013). Each model possesses an order of labour law appropriate to it, depending upon the differential articulation of the contradictions of capitalist social relations, the integration of organised labour, the valency of market forces and the diffusion of the commodity form. These orders are not passive, functional response to the needs of capital. Instead, they are historically contingent structures in which the abstract function of the commodification of labour-power (Kay & Mott, 1982) is buffeted by class struggle and the attempt to impress the competing political economies of labour and capital upon the legal form (Lebowitz, 2003).

### **The Parisian regulation approach: an overview and key concepts**

The PRA emerged in France in the late-1970s, stemming from Aglietta's (1979) path-breaking account of the development of American capitalism. Derived from structural Marxism, it nevertheless rejected the Althusserian conception of social reproduction as quasi-automatic (Jessop & Sum, 2006). Instead, regulationists emphasised the inherently improbable character of capital accumulation, a function of the contradictions inscribed in capitalist social relations (Jessop & Sum, 2006). The necessary question in light of this characterisation was how capitalism could be made stable for periods of time, as was the case in the post-War decades.

The answer was *regulation*. Capital accumulation, and the tendential laws governing it, can be guided and regularised through a contingent, historically variant combination of economic and extra-economic factors in a distinctive institutional matrix, vitiating, deferring or displacing the various contradictions encoded in capitalism's DNA and reproducing the capitalist mode of production (Aglietta, 1979; Tickell & Peck, 1995).

Such institutional fixes to the paradoxes of capitalist social relations achieve only a provisional and temporary measure of success. Regulation cannot absolve capitalism of its contradictions; indeed, the attempt to regulate particular paradoxes tends to exacerbate others, unleashing disequilibria which ultimately undermine the coherence of any particular regulatory phase (Tickell & Peck, 1995; Harvey, 2010). The resultant crisis threatens the stability and sustainability of capital accumulation, which can only be restored with the development of new regulatory structures and norms.

Regulationists have developed a set of sophisticated concepts to explain the constituent structures of a system *en régulation*. These are an:

- *Industrial paradigm*-a dominant model of labour process organisation, governing the social and technical division of labour;
- *Accumulation regime*-a macro-level articulation of production and consumption reproducible over a long-period (Jessop, 2013). Depending upon its articulation of Department 1 (producing means of production) and Department 2 (producing means of consumption), such a regime can be extensive or intensive (Aglietta, 1979);
- *Mode of regulation*-an ensemble of norms and institutions that can stabilise an accumulation regime (Jessop & Sum, 2006). It includes the form of the wage-labour-nexus, state structures, modalities of competition and insertion into the international economy; and
- *Model of development*-a coherent combination of an industrial paradigm, accumulation regime and mode of regulation (Lipietz, 1992).

With the notion of a model of development, the PRA is ideally placed to deliver a mid-range Marxist account of the evolution of capitalism in all its national guises (Neilson, 2012). This potential has remained largely untapped within Australian scholarship (for notable exceptions, see Broomhill, 2008; Lloyd, 2002, 2008). This is particularly unfortunate for labour law and industrial relations work, given the analytical sophistication the PRA could infuse into study in these areas (Treuren, 1997b). By elucidating not only the correlation between economic and extra-economic forces, but the actual modes of their articulation and co-constitution within evolving capitalist social relations, the PRA opens the way to a more holistic understanding of contemporary issues in industrial relations and labour law. Armed with PRA methodology and concepts, we can see the developments in these fields as the result of both the structural tendencies of the abstract capitalist mode of production *and* the contingency of its concrete forms; a useful rejoinder to the identified shortcomings of analysis.

Indeed, it is in acknowledging the dialectical relationship between the abstract and the concrete that the PRA represents a significant advance over other approaches to labour law change, such as VOC and LO. Whilst the former acknowledges the role of law generally, and labour law specifically, in differentiating between different national capitalisms (typologised broadly as ‘liberal market economies’ and ‘coordinated market economies’; Hall & Soskice, 2001), it takes as its conceptual foundation point the relational firm, rather than the contradictions of capitalist social relations. Although outlining well enough the role law plays in constituting work relations in stationary societies, VOC lacks an account of endogenous social change (Boyer, 2005); it is therefore incapable of describing legal development in response to the developing tendencies and contradictions of capitalism. The LO is even more static, describing the nature of labour regulation as a function of a country’s legal history, namely whether it belongs to the common or civil law tradition (Botero et al, 2004). Considering the time-scale involved, LO demands deep path-dependencies (Ahlering & Deakin, 2007) that verge on legal determinism. Such an approach is even more unsuited than VOC in accounting for legal change *within the past several decades*, and both compare poorly to the PRA’s utility in this endeavour.

### **Fordism and liberal-productivism: ideal-typical models**

Using the above concepts, regulationists have generated ideal-typical models of development. The model for which the PRA is most well-known (or perhaps notorious) is *Fordism*. Fordism has variously been used to describe a labour process, an accumulation regime, a mode of regulation or model of development. Although conceptual slippage sometimes dogs regulationist work, most of the confusion arises outside of a regulationist paradigm (Boyer, 1990; Hampson, 1991). We must thus unfold this notion precisely.

According to Lipietz (1992), the Fordist model of development combined a Taylorist, mechanised labour process paradigm within large, multi-department firms, an autocratic mass production/mass consumption intensive accumulation regime synthesizing full employment with rising productivity and real wages, and a mode of regulation involving a redistributivist welfare state that guaranteed effective demand through protective social legislation and the generalisation of mass consumption norms. This model provides a substantive understanding of the physiology of the post-War boom, particularly its mechanisms of coherence and potentialities for crisis.

Due to a combination of inter-related features, including the exhaustion of productivity growth in lead sectors, resistance of workers to intensified exploitation, the internationalisation of production and the erosion of US hegemony (Aglietta, 1979; De Vroey, 1984; Lipietz, 1992), Fordism began to lose coherence from the early-1970s onwards, reflected in high inflation, growing unemployment and stumbling productivity growth. This period extended into the 1980s, and was characterised by 'institutional searching' to escape the growing crisis and restore stable accumulation (Heino, 2013).

In the early to mid-1980s, the ideology of neo-liberalism progressively imposed an intellectual order upon these unfolding events (Jessop, 1988) and armed capital with the resources to attempt to shape a new model of development. Of course, purposive action often leads to unintended results in complex social systems, whilst accidental discoveries and experiments can produce institutions of unexpected functionality (Lipietz, 1987). Moreover, the program of capital had to contend with the political economy of labour (Lebowitz, 2003).

However, by the late 1980s-early 1990s, the elements of a new model had come into existence. These cohered into a system Lipietz (2013) dubs liberal-productivism. This model unifies a fractured industrial paradigm (which combines the extension and intensification of Taylorism in the tertiary sector with islands of 'negotiated involvement' on the part of workers) with an intensive accumulation regime that disassociates real wages and productivity (and is thus debt-fuelled) and a neo-liberal mode of regulation in an increasingly complex global division of labour (Lipietz, 2013). This system remains on foot today, although the Global Financial Crisis arguably represented the beginnings of its terminal crisis (Ivanova, 2011).

Each model structured the various contradictions of capitalist social relations in a distinct fashion. Whereas Fordism took the wage-labour nexus as the site of primary contradiction (institutionalising wages as a source of effective demand and integration of organised labour as conducive to social stability: Jessop, 2013), liberal-productivism both inverts this nexus (conceiving of wages as a cost of international production) whilst transfiguring capitalism's other contradictions (such as substituting competition in place of monopolist regulation: Jessop & Sum, 2006). Each model thus represents an historically conditioned crystallisation of the contradictions of capitalist social relations.

It is important to note that these ideal-typical models are the result of a process of abstraction which, in the manner of Marx, 'brings out and fixes the common element' but apprehends 'no real historical stage' (Marx, 1973: 85-88). The ideal-typical model of development does not describe the concrete experience of any particular society. Rather, as Treuren (1997a) notes, it forms a vital intermediate link in the dialectical movement from abstract to concrete. These models thus need sensitising to the Australian context if they are to fulfil their analytical potential (Treuren, 1997b).

### **Antipodean Fordism and liberal-productivism**

Applying the stylised features of Fordism to the Australian experience of the post-War boom reveals a model of development that, whilst recognisably Fordist, modifies some of its key abstract components. The Australian incarnation of Fordism combined:

- An industrial paradigm based on mass production but marked by an incomplete incorporation of Taylorist forms of work control and organisation (Wright, 1993) with;
- An intensive accumulation regime of mass production and mass consumption which *was not autarkic*; that is, it was premised upon the ability of the export-oriented farming and mining sectors to underwrite high levels of industrial protection; and
- A mode of regulation that precociously enshrined the Fordist wage-labour nexus in the arbitration system. This mode, although guaranteed by a Keynesian Welfare National State (KWNS), was characterised by the unification of that state's economic and social objectives/functions (Castles, 1994).

I have dubbed this model of development antipodean Fordism (a term coined by Rolfe, 2003, who, however, uses it as a vague cultural construct). It builds upon the features of the 'Australian mode of development' Treuren (1997b) hinted at whilst more clearly systematising it in line with discrete PRA concepts.

Unlike Fordism, the liberal-productivist ideal-typical model requires less modification to capture the Australian experience, given the fact that it is constituted by an explicitly global production system that corrodes the ability of states to control a nationally bounded economic and political space (Jessop, 2013; Lipietz, 2013). Although important continuities with antipodean Fordism are present (like the porous nature of Australian intensive accumulation), it is in Anglophone countries like Australia, the US and UK that liberal-productivism has found purest expression (Jessop, 2013; he uses the term 'finance-driven accumulation').

Now that the features of antipodean Fordism and liberal-productivism are in hand, we can move to a consideration of the labour law regimes that characterised them. We must first, however, gain an understanding of labour law within capitalist society generally.

### **Labour law under capitalism**

Unlike previous class systems, the economic and extra-economic moments of exploitation within capitalism are temporally and spatially divisible (Wood, 2003). This substitutes mediated, impersonal and bureaucratic relations of exploitation in place of the personal bonds of dependency that characterised slave and feudal societies (Kay & Mott, 1982; Wood, 2003). This reality is the material basis of the legal form, a framework of social relations characterised by abstract, universal and formal norms that together comprise an axiomatic system (Kay & Mott, 1982; Fine, 1984; Poulantzas, 1978).

Labour law, derived from this abstract form, is responsible for ensuring the continued reproduction of labour-power as a commodity (Kay & Mott, 1982). Within its fabric, however, is combined an insoluble contradiction; that between reconciling the formal equality of commodity exchange (Pashukanis, 1978) with the reality of exploitation. The result is a legal order that is shot through with all the tensions of capitalist social relations (Kay & Mott, 1982). The integration of a collective historical subject (the proletariat) into the legal process ensures the law itself becomes an arena of class struggle in which the competing political economies of labour and capital struggle for the higher ground.

Kay & Mott (1982) have plotted this process as a 'law-administration' continuum. The growth of working-class power ensures that the capitalist state is forced to put out the spot-fires of proletarian struggle through the development of administrative fixes (Kay & Mott, 1982). Although initially distinct from law, these are given legal form and come to be part of a legal-administrative totality.

Given the tendency of different modes of development to crystallise capitalist contradictions in distinct hierarchised patterns, and the different potentialities this opens for the exercise and

integration of working-class power, it follows that the trajectory and substance of this continuum will be both a product and a presupposition of the model of development of which it is part.

### **Antipodean Fordism and labour law**

The site of primary contradiction within Fordism was the wage-labour nexus, the process of socialisation of productive activity within capitalism (Boyer, 2002). More specifically, Fordism encoded this wage-labour nexus into a distinct form, associating real wage growth and employment security with expected productivity increases and the intensification of labour (Bertrand, 2002; Boyer, 2002). For this nexus to function, a set of distinct legal and institutional conditions were required, namely those that allowed for the diffusion of wage increases from high-productivity 'lead sectors,' permitted collective and 'connective' bargaining (Boyer, 1990), encouraged the organisation of labour and developed a notion of the 'standard,' full-time employment contract. These could be considered the abstract features of labour law appropriate to Fordism.

Antipodean Fordism was unique in terms of the precocious institutionalisation of this nexus. Indeed, it exceeded the ideal-typical model in terms of the integration of labour into the state and the law. The system of compulsory conciliation and arbitration proved adept at articulating real wages and productivity growth within key sectors and then, through the machinery of the award system, diffusing these gains throughout the labour force. Such a mechanism is a key moment in the Fordist mode of regulation. The stability of effective demand, and with it the stability of Fordist intensive accumulation, depended upon the coherence and (relative) homogeneity of the wage structure (Boyer, 2001). In Australia, the arbitration system was better placed to deliver this coherence than in other Fordist countries.

Cochrane (1988) observes the process at play in the post-War years, with militant unions in the metal trades, mining and stevedoring applying 'plant by plant duress' to individual employers; concessions, once granted, could 'flow-on' to other sectors of the economy. This was particularly the case with the metal industry, an archetypal Fordist leading sector. Well into the late-1960s, the Metal Trades Award was at the apex of the award system, with tribunal decisions about margins for skill being founded upon it. Respondents to other federal awards would then have their own award varied accordingly, whilst state tribunals would generally follow the lead of their federal counterpart. Even after the advent of the 'Total Wage' in 1967, the metals sector was at the forefront of wage increases and flow-ons and was a key site of the wage explosion of the early-1970s (Bramble, 2008).

This tendency for the Fordist wage-labour nexus to take root in the Australian arbitration system was further expedited by the notion of 'comparative wage justice,' which enshrined the view that equal work should be equally recompensed regardless of industrial location (Provis, 1986). Such an ideology was a powerful force of wage homogeneity when inserted into the fabric of the award system.

Another element of antipodean Fordism that directly shaped the modality of labour law was its unification of the economic and social policy goals of the Australian KWNS. Unlike many other Fordist countries, where a comprehensive system of social support married to a large public sector fulfilled the government's welfare objectives, the Australian state used the arbitration system to deliver *both* economic and social policy. It was this reality that led to Castles' (1994) description of the 'wage-earners welfare state'. With the dissemination of 'occupational welfare benefits' (Castles, 1994) through the award system, the Australian KWNS, in concert with the dominance of manufacturing under intensive accumulation, tended to produce the relatively homogenous, compressed wage structure typical of Fordism.

The fact that the mode of regulation peculiar to the antipodean Fordism largely subsumed the economic and social functions of the KWNS into the quasi-judicial system of wage regulation



heightened the fundamentally contradictory nature of labour law explicated by Kay and Mott (1982). That antipodean Fordism combined this necessarily contradictory structure with broader social and economic imperatives could not help but exacerbate this tension, particularly insofar as it encouraged an identity of economic/social performance with the regulation of the labour market (a reality that pronounced itself strongly in the crisis of antipodean Fordism).

Labour law under antipodean Fordism was also influenced by the latter's encouragement of moderate trade unionism, itself one of the purposes of the *Conciliation and Arbitration Act 1904* (s2(vi)). The arbitration system can be viewed as an institutionalised class compromise between labour and capital (Lloyd, 2002), one that fixed a pronounced institutional role for labour within the fabric of labour law. The integration of organised labour into the labour law system was itself contradictory, however, in that it placed the union movement in a position whereby it could use its strength to extract concessions from the state (Heino, 2013). Throughout the post-War years, this often saw the state putting out the spot-fires of working-class discontent, which ranged from campaigns for a reduction in work hours, higher pay, gender equality, occupational health and safety improvements and industrial democracy (Bramble, 2008). The administrative fixes this entailed constantly threatened to abrade the power of capital and the stability of accumulation. In the full employment economy of post-War Fordism, this reality contained latent within it the potential of arbitration becoming maladaptive for capital. In the event, dysfunction set in through the trade union movement subverting arbitration through collective over-award bargaining, often at the shopfloor level (Bramble, 2008). This usurpation of one of the key institutions of antipodean Fordism was one of the levers of its crisis.

In short, the features of the order of labour law appropriate to antipodean Fordism reflected and crystallised its unique structuring of capitalism's contradictions, particularly its construction of the wage-labour nexus. In practice, the elements of the system, namely compulsory arbitration, encouragement of moderate unionism, the unification of wage and social objectives and the growth of administrative fixes to worker power ensured its coherence whilst also containing disequilibria. The crisis of antipodean Fordism from the mid-1970s onwards was simultaneously the crisis of this order of labour law.

### **Liberal-productivism and labour-law**

Liberal-productivism reorders the abstract contradictions of capitalism, both in terms of their significance vis-à-vis others and their concretisation in new structures. A key change is the inversion of the Fordist wage-labour nexus, which is reconstructed as a cost of international production (Jessop, 2013). This inversion, together with the destruction of the manufacturing base of domestic intensive accumulation (Ivanova, 2011) saw the association between productivity and real wage growth that Fordism had fostered destroyed. Instead, the gap between increased productivity and stagnating real wages was pocketed by capitalists (Cowgill, 2013). For this to be achieved, the institutions of the antipodean Fordist wage-labour nexus had to be modified or dismantled, particularly those elements that afforded labour the opportunity to leverage gains won in key sectors to the workforce at large. The fragmentation and decentralisation of bargaining structures and the destruction of the pyramidal structure of the award system are key moments in the substitution of a liberal-productivist labour law regime in place of its Fordist predecessor.

The need to hamstring the ability of organised labour to make common cause is also a result of the inversion of the antipodean Fordist wage-labour nexus. The dysfunction of the latter manifested itself in a wave of industrial militancy in the late-1960s and early-1970s which often pressed against and outside established legal and administrative channels (Bramble, 2008). The threat this posed to the continued valorisation of capital, and the related strain this placed on the state's ability to formalise labour-power, necessitated mechanisms by which the unification and solidarity of the proletariat (a development that Fordism continually tends toward: Aglietta, 1979) could be disrupted. Labour law, at the forefront of the commodification of labour-power, is crucial in this

endeavour. This tendency was the driving force behind a legal climate that became increasingly hostile towards trade unionism, firstly by breaking the most militant sections of organised labour (such as the deregistration of the Builder's Labourers Federation in 1986) and then through gradually severing the institutionalised links between trade unionism and the conduct of industrial relations. It is in this light that the movement towards the individualisation of workplace relations must be read (Gould, 2010).

The decline of working-class power that has generally been a feature of liberal-productivism is itself a force that impinges upon the form and content of the labour law regime. The greater the collective power and mobilisation of the working-class, the more the state is compelled to resort to administrative fixes to ensure the continued reproduction of wage labour (Kay & Mott, 1982). The erosion of trade union power and the intensified atomisation of the proletariat into competing units agglomerated around separate capitals reduces the ability of the working-class to pressure the state in this fashion; administrative fixes give way to the legal form narrowly construed. In the Australian experience of liberal-productivism this reality has seen a continual state retreat from direct administrative regulation of the labour market, partly substituted by an increasing juridification of work relations that constructs the labour-capital relationship in the fetishised image of abstract, de-classed juridical equals engaged in mutually beneficial exchange (Poulantzas, 1978). Juridification, which I construct as the subsumption of administrative fixes beneath the abstract legal form, is the concrete expression of the reduced need of the state to spawn institutional fixes to proletarian struggle. It also represents a reconfiguration of the law-administration continuum in which the centre of balance is shifted towards law.

This process is organically related to the increased valency of market forces within the liberal-productivist model of development consequent upon its explicit positioning of competition as a principle of social organisation (Lipietz, 2013). The advent of this mode has seen a hitherto unprecedented commodification of areas of social life previously insulated from the commodity form (Ivanova, 2011). Pashukanis (1978) was correct in highlighting the role of exchange relations in the development of a legal form characterised by abstraction and formal equality. The greater the colonisation of market forces within the social body, the more important will be the purpose of law in providing a 'medium of association' between commodity purchasers and sellers (Fine, 1984: 142).

Within the framework of Australian liberal-productivism, this process of juridification has tended towards the diminution/destruction of the quasi-administrative configuration of labour law and its replacement by a more generalist regime that both enshrines individual rights over and above collective rights and channels labour disputes through the courts of common law or a weakened tribunal (Ludeke, 1998). In the 1980s and 1990s, this process manifested itself as an increasing sidelining of the Arbitration Commission, with militant employers at Mudginberri, Dollar Sweets and Australian Airlines (to name several notable examples) breaking trade union power through the imposition of archaic common-law industrial torts. From the 1990s onwards, the labour law structure itself came to be transformed, as the state sought to recast the labour market as no different to any other commodity market. It is true that the *Fair Work Act 2009* does dispense 'with the more egregious manifestations of individualisation introduced by the Howard Government' (Creighton, 2011: 142) and makes the operating environment of trade unions somewhat less harsh than it was under WorkChoices. However, the species of collectivism it encourages is a parochial one, centred on the enterprise and enshrining the individual worker as the repository of many ostensibly collective rights (Creighton, 2011). It follows WorkChoices in relegating trade unions to one of a number of participants in the conduct of industrial relations (Hardy & Howe, 2009), which addresses the dysfunction of the Fordist wage-labour nexus by disrupting the unification of the proletariat (Aglietta, 1979). In short, *contra* suggestions that the *Fair Work Act* represents a re-collectivisation of Australian labour law, it is better conceived as part of the experimental 'roll-out'

of liberal-productivist structures (Jessop, 1992) whereby the needs of the new model of development are reconciled with the limits of political legitimacy (O'Connor, 1973).

Lastly, the decline of the antipodean Fordist mode of regulation, and its unique combination of economic and social policy objectives under the aegis of the arbitration system, has led to a usurpation of the predominance of labour law in constituting labour-power. Liberal-productivism's attack upon the precocious antipodean Fordist wage-labour nexus has fundamentally crippled the ability of this nexus to deliver wide-ranging policy goals. In its place has arisen a more functionally differentiated welfare system and a wage relationship which is *increasingly sensitive to legal regulation outside of labour law narrowly construed*. It is this reality that the Labour Market Regulation has correctly, if cursorily, apprehended.

In place of antipodean Fordism, liberal-productivism unleashes forces that attack the efficacy and solidarity of collective labour through a reformulation of the wage-labour nexus, reduce the need of the state to develop administrative fixes to class struggle and increase the valency of market forces through an extension of the commodity form. These both constitute, and are constituted by, the labour law regime of liberal-productivism.

## Conclusion

This paper attempts to apprehend in a theoretically rigorous manner the nature of the changes in Australian labour law over the past several decades. Employing the methodology of the PRA, we can modify regulationist ideal-typical models of development to take into account the idiosyncrasies of the Australian experience. Based upon their ordering of the contradictions of capitalist social relations, the nature of organised labour's insertion into the institutional fabric, the potentialities for the exercise of collective labour's power and the valency of market forces, antipodean Fordism and liberal-productivism both fix the abstract function of labour law in distinct concrete structures. This understanding is critical in both exposing the causal relationships linking law to the evolution of Australian capitalism and identifying opportunities to mobilise counter-strategies to the disempowering (for labour) nature of legal change over recent decades.

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